

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
Allocation Method for 844 Toll Free)	CC Docket No. 95-155
Code Opening)	WC Docket No. 12-260

COMMENTS OF SMS/800, INC.

SMS/800, Inc. (“Company”) hereby submits these comments in support of toll free number allocation in the above named proceeding. The Company encourages the Commission to implement restrictions on Responsible Organization (“RespOrg”) number reservations temporarily and immediately subsequent to the future, yet-to-be-determined, date of release of the new 844 numbering plan area (“NPA”) (“844 code”). The Company recommends this course of action in order that the associated toll free number resources are delivered to the public in a competitively and technologically neutral manner.

844 Toll Free Code Opening

As noted in a recent ex parte filed with the Commission on April 4, 2013, the Company has worked extensively with the Commission in order to ensure toll free numbers are available to the public in an equitable manner.¹ In the recent past, Wireline Competition Bureau (“Bureau”)

¹ SMS/800, Inc. Letter to Julie Veach, Chief Wireline Competition Bureau, Toll Free Number Exhaust Forecasting, 844 NPA, April 4, 2013.

Staff requested that the Company recommend a specific date on which the 844 code should be opened for industry use. On November 14, 2012, the Company urged that the FCC open the 844 code on or about February 15, 2014.²

The Company monitors daily toll-free number reservation activity. Every week the Company reviews system generated reports that indicate the number reservation trends. In the month of March 2013, there was a material increase in the number of toll free numbers reserved. This anomaly resulted in a substantial reduction of available numbers in the spare number pool. Since the current count of numbers in the spare pool was not forecast to be reached until the first calendar quarter of 2014, the Company took the additional step, via the April 4, 2013 ex parte, to remind the Commission of the necessity to release a public notice alerting the industry to the recommended 844 code opening date. The Commission responded that same day via a public notice and solicited comments from the industry on an allocation method for distribution of numbers resident in the 844 code.³

Allocation of a Finite Public Resource

The Commission has long recognized that toll free numbers "comprise a finite and very valuable public resource" which are critical to business functions and service the needs of thousands of consumers.⁴ To protect these benefits, pursuant to Section 251(e)(1) of the Telecommunications Act, the Commission has adopted policies to require the allocation of toll free numbers among

² SMS/800, Inc. Letter to Marlene Dortch, Secretary, FCC, Toll Free Number Exhaust Forecasting, 844 NPA. November 14, 2012.

³ Public Notice, Comments Sought on Allocation Method for 844 Toll Free Code Opening, DA 13-617, CC Docket No. 95-155, April 4, 2013.

⁴ In the Matter a/Toll Free Service Access Codes, 10 FCC Rcd 13692 (1995).

domestic users on a fair, equitable and orderly basis.⁵ To further protect the public's interests, the Commission has put in place explicit rules for the ordering and use of toll free numbers. Those rules prohibit the warehousing or hoarding (including bartering for a fee) of toll free numbers.⁶

The industry also recognizes telephone numbers as a finite common resource. The Alliance for Telecommunications Industry Solutions, Inc. ("ATIS") guidelines on distribution of new NPAs have been developed to "promote the efficient and effective use of a finite numbering resource, minimizing the cost and need to expand . . . availability while at the same time allowing for maximum flexibility in the introduction of new services, capabilities, and features." ATIS also reflects on the genuine need for conservation measures and urges consistency with the needs of the competitive commercial marketplace. In the guidelines cited here, ATIS takes care to emphasize that "the concern for the need to conserve this resource will not be permitted to inhibit or impede the ability to offer new telecommunications capabilities or services."⁷ The Company concurs wholeheartedly with ATIS in this regard. Our recommendations, as stated herein, are designed to mirror the industry's stated objectives of maintaining neutrality while supporting market consumption of toll free numbers upon the release of a new toll free NPA.

Background

On June 25, 2010, the Bureau issued a letter authorizing Database Service Management, Inc. ("DSMI"), the 800 Service Management System ("SMS/800") database administrator, to open

⁵ Toll Free Service Access Codes, 13 FCC Rcd 9058 (1998) ("Fourth Report and Order") and 47 C.F.R. § 52.111.

⁶ 47 C.F.R. § 52.105 and 47 C.F.R. § 52.107.

⁷ ATIS NPA Allocation Plan and Assignment Guidelines, Publication 0300055, November 9, 2012.

the 855 toll free code.⁸ In that letter, the Bureau found that it was in the public interest to open the 855 toll free code two months later on October 2, 2010. On August 27, 2010, alerted to the potential of inequity in the distribution of these resources, the Commission sought comment on whether any allocation scheme or rationing of new 855 toll free numbers was needed.⁹ Dozens of comments were submitted in response to the Commission's request. In general, most commenters noted that in previous openings of toll free codes, in which allocation or other distribution controls were not in place, problems immediately arose. A number of commenters stated that certain, larger RespOrgs authorized to reserve and distribute toll free number could do so at a disadvantage to smaller RespOrgs.¹⁰ Further, those RespOrgs with the financial wherewithal to connect to the SMS/800 via a technology known as Mechanized Generic Interface ("MGI") were identified as having an advantage over other RespOrgs because of the flexibility inherent in that interface.¹¹ Following the comment period, on September 30, 2010, the Commission issued an order establishing, among other things, an allocation method for release of the 855 toll free code.¹²

⁸ Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Michael Wade, President, Database Service Management, Inc., Docket No. 95-155, DA 10-1117, June 25, 2010.

⁹ Toll Free Service Access Codes, CC Docket No. 95-155, Public Notice, DA 10-1604, August 27, 2010.

¹⁰ For example, Toll Free Number Coalition, Petition for Emergency Relief and Expedited Action, In the Matter of Toll Free Service Access Cods, DA 10-1117, CC Docket No. 95-155, August 31, 2010 and Worldlink Services Corp. Comments, In the Matter of Public Notice on 855 Toll Free Code Opening Allocation, DA-1604, CC Docket 95-155, September 3, 2010.

¹¹ MGI is a two-way interface with the SMS/800 allowing RespOrgs, among other things, larger batch orders and real-time, automatic throughput to downstream toll free number customers. Other means of access to the SMS/800 are the 3270 and Web-based Access ("WBA") interfaces. These are synchronous interfaces and require a response from the SMS/800 before new requests are sent. RespOrgs that chose to use the 3270 and WBA interfaces to connect to the system during previous code openings experienced delays in receiving responses from the SMS/800 due to the unusually large traffic load placed on the system. A limit on total numbers ordered in a twenty-four hour period would neutralize any technology advantage during the allocation period.

¹² In the Matter of Toll Free Service Access Codes, CC Docket 95-155, DA 10-1885, September 30, 2010.

Vanity Numbers

On January 25, 1996, with the first new toll free code opening - the 888 code - on the horizon, the Bureau adopted procedures for identifying those 888 numbers corresponding to the 800 numbers on which subscribers asserted a commercial interest. The Bureau, convinced that allocation was in the public interest, “instructed DSMI to mark as ‘unavailable,’ in the toll free database, the 888 numbers identified pursuant to those procedures. The Bureau deferred decision on whether any permanent special protection or ‘right of first refusal’ to 800 subscribers seeking replication in the 888 code should be granted until the Commission could more fully consider the consequences of a final decision on the fair, equitable, and orderly allocation of toll free numbers, as well as the potential economic effects of that decision.”¹³

Later, in a follow-up letter to DSMI on June 24, 1996, the Bureau clarified that it “did not intend to hold in the ‘unavailable’ pool created by the January 1996 decision, any number for which the 800 customer originally requesting special treatment no longer wishes to assert any interest,” and that the “creation of that pool of unavailable numbers was an interim measure intended to last only until the Commission decided where to strike the balance between the most efficient use of this limited resource and the private interests of parties asserting that they had such a strong commercial interest in the 800 number that releasing the corresponding 888 number to a third party would place that interest at risk.”¹⁴ By this action, precedent was indeed established for the purpose of allowing businesses or other interests holding toll free vanity numbers to exercise a prerogative when a new toll free code was opened. That prerogative was, wisely, protected by a regulatory allocation or rationing scheme.

¹³ Toll Free Service Access Codes, Report and Order, (CC Docket No. 95-155), 11 FCC Rcd 2496 (Com. Car. Bur.1996) and Toll Free Service Access Codes, Order, (CC Docket No. 95-155), 11 FCC Rcd 3045 (1996).

¹⁴ Letter from Regina M. Keeney, Chief, CCB to Michael Wade, DSMI, CC Docket No. 95-155, June 24, 1996.

Further, during the opening of the 877 code, commenters expressly noted concerns about potential conflicts regarding vanity numbers or, more specifically, vanity numbers which fell into the category of replicated numbers across two or more toll free NPAs. Concerned industry parties again emphasized the argument that numerous toll free number subscribers have invested considerable resources to protect and market existing vanity numbers. With the opening of a new code, those subscribers would inevitably share equivalent numbers with other parties, potentially leading to customer confusion and possible trademark litigation.¹⁵

The Company sees no compelling reason to allocate toll free numbers solely for the benefit of those who hold similar toll free vanity numbers in a different toll free NPA. However, it is self evident that vanity numbers have been proven to be in higher demand than other toll free numbers whose particular sequence on any telephone device or handset keypad does not spell a marketing friendly word or phrase. Accordingly, controlled distribution of these resources will assist in responsibly meeting that demand. While the Company takes no position on whether or not historically applied, cross NPA toll free number replication restrictions are warranted, the generic idea that government sanctioned allocation can correct a potential market failure is consistent with previous Commission actions.

Recommendation for Allocation of 844 Numbers

Without detailed analysis or investigation, it is difficult to ascertain whether or not a RespOrg is acting inconsistently with the Commission's rules against warehousing or hoarding of toll free

¹⁵ TLDP Communications, Inc., Supplemental Petition for Reconsideration, In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, June 26, 1998.

number resources. The Bell Operating Companies' ("BOC") tariff filed with the Commission explicitly lays out terms and conditions for administration, purchase and use of toll free services to include prohibitions on illicit use of these public resources.¹⁶ Regardless, noting the Commission's concerns regarding the potential for abuse as it seeks comment here, Commission precedent with the 855 code, as well as feedback previously submitted by many in the industry, a more proactive path during and immediately after the 844 code opening would be of mutual benefit to all. Allocation would remove an incentive for any RespOrg to push the limits of the Commission's warehousing and hoarding rules. Such an allocation would also preserve the equity in distribution of those numbers. That, naturally, is of paramount concern to the government and to the industry.

The Company is a strong advocate of allocation of number resources in the weeks following the opening of the 844 code. A fair rationing of these resources is certainly in the public interest. To implement an allocation plan with ample notice to the industry will both allow an orderly code opening as well as reduce the number of associated disputes and potential regulatory complaints. Further, such a plan set out well in advance of the final date set for the 844 code opening will allow the Company to prepare its internal systems and databases to meet the allocation and distribution method mutually agreed to by all interested industry participants under the auspices of the Commission.

The Company finds no compelling reason not to recommend mirroring the allocation method ordered by the Commission during roll out of the 855 code. More specifically, the Company recommends that for a period of thirty (30) days after the yet-to-be-determined date for the 844 code opening, no RespOrg may reserve more than one hundred (100) toll free numbers in the

¹⁶ Bell Operating Companies, Service Management System (SMS/800) Functions, FCC No. 1, February 15, 2013.

new NPA in any one twenty-four (24) hour period. For the purposes of these comments and our recommended allocation plan, a RespOrg is considered an entity identified by the first two characters of its RespOrg identification code in the SMS/800.¹⁷ This daily allocation will level the playing field between small and large RespOrgs and will negate any advantage inherent in connecting to the Company's database via MGI or a more robust network technology.

While 100 toll free numbers seems a relatively small figure, the Company believes that setting the limit at that level not only appeals to the larger RespOrgs who do in fact have greater demand but it also allows the smaller RespOrgs the opportunity to process that amount in the twenty-four hour period in the event they are fortunate to have similar subscriber demand. In 2012, approximately 5,058,000 toll free numbers were reserved by an average of 422 RespOrgs. This resulted in a mean reservation total of approximately 14,500 per business day or fewer than 50 per business day per RespOrg.¹⁸ The Company believes a limit set at this lower average would be insufficient to meet the needs of the toll free marketplace. 100 not only appears to be a number that would meet customer demand but would not strain the operational resources of the smaller RespOrgs who may depend on manual intervention to process reservation orders.

Conclusion

With the background provided and for the reasons stated above, the Company believes an allocation plan for the 844 code, announced well in advance of that code opening, will not only serve the public interest but will ensure both operational readiness within the SMS/800 systems. Additionally, the plan will forestall most of the potential disputes that may arise as a result of the

¹⁷ SMS/800, Inc. Industry Memorandum, 855 NPA Number Allocation, October 5, 2010.

¹⁸ The Company used 260 business days for calendar year 2012 average daily number reservation calculations.

new availability of a limited common property resource.

Respectfully Submitted,

A handwritten signature in dark ink, consisting of a large loop followed by a horizontal line that tapers to a point.

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